

C.J's Court

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 476 (S/B) 2003

Surendra Singh Negi

S/o late H.S. Negi Retd. Suptd. Engineer,

U.P. Jal Nigam, Dehradun & Others --- Petitioners

Vs.

State of Uttaranchal,

Through Secretary,

Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam,

Dehradun & Others.

---Respondents

Mr. A.D. Tripathi, Advocate for the petitioner.

Mr. N.B. Tiwari Advocate for the respondent.

Mr. V.B.Negi, for the Uttaranchal Pey Jal Sansadhan Vikas Avam Nigam, Dehradun.

Coram : **Hon'ble S.H. Kapdia, C.J.,**
 Hon'ble Rajesh Tandon, J.

Date : 26th September, 2003:

ORAL JUDGEMENT : [Per Hon. Chief Justice]

Rule.

Respondents waive service.

Mater is urgent. Short point is involved. Therefore, we are disposing of writ petition finally.

This petition is filed by pensioners, who have retired from the Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman before 7th November 2002. They were receiving pension up to 31st July 2003. By Impugned order dated 30th August 2003 issued by the Chief Engineer, Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam, their pension has been stopped on the ground that state of Uttaranchal came into existence on 9th November 2000 and therefore, Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam was required to pay

pension after the cut off date (7th November 2002) only to those employees who belong to hill cadre and not to those who belong to plane cadre. In other words, the Nigam has taken the stand that it will pay pension only to those employees whose name stood in the hill cadre on 7th November 2002. It is the case of the petitioners that employee who retired from service before creation of this State, were regularly getting their pension up to the date of the impugned order, that till today problem of hill cadre and plane cadre never came into existence. That in this State, there are various departments such as P.W.D. Irrigation, Education, Van Vikas Nigam, Uttaranchal Power Corporation etc. it is argued that all these departments/corporations are situated in this State. That by withholding the pension, the petitioners were harassed. That there was no reason to stop pension of retired employees of the Nigam, who have retired before 7th November 2002. That before 7th November 2002, there were employees working in the Nigam in the hill cadre and simultaneously, there were employees who were working in the Nigam in the plane cadre. That under the impugned order, employees of the Nigam shown in the hill cadre before 7th November 2002 were receiving pension, whereas pensioners whose name appeared in the plane cadre are not getting pension, through both the categories of employees were the employees of the Nigam. Therefore, the impugned order has been challenged on the ground that it is arbitrary and violative of Article 19(1)(f), Article 14, 16 & 21 of the Constitution.

We find merit in the writ petition. Prior to 9th November 2000, in the Nigam, employees were categorized in the two cadres namely hill cadre and plane cadre for the purposes of seniority, promotion and reservation, however, such classification cannot be applied to pension. On the cut off date, i.e. 7th November 2002 for purposes of pension, all employees belong to the Nigam. For pension one cannot have hill cadre and plane cadre. For purposes of pension, there cannot be any difference. When an employee retires from the Nigam, he is entitled to pension for the number of years of service he has put in the Nigam.

Pension is not a bounty. It is a valuable right. In the circumstances, there is no rational in categorizing the employees of the Nigam, for purposes of pension, between hill cadre and plane cadre. One cannot see any object behind such unreasonable classification. If the argument of the Nigam is accepted, it would led to very bad precedent. In future, the Nigam will also pay different sets of salaries depending on the cadre to which an employee belongs, that is not permissible. Such discrimination is arbitrary and unreasonable. As far as gratuity and pension are concerned, the above classification into cadres cannot not be permitted. Ultimately, all are employees of the same Organization in the matter of gratuity and pension. Under the U.P. Reorganization Act 2000, assets and liabilities are required to be apportioned between Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam and U.P. Pey Jal Nigam. Under that Act, Governments/ Organizations of the tow states have to share their liabilities and assets. Therefore, if there is any claim surviving in favour of Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam, it can enforce such its claim against its counter part in U.P. But on that ground, the Nigam in Uttaranchal cannot stop payment to the pensioners (petitioners).

Accordingly, we set aside the impugned order dated 30th August 2003 issued by the Chief Engineer, Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam and we direct pension to be paid to the petitioners forthwith.

Accordingly Rule is made absolute in terms of Prayer clause (i). No order as to costs.

(Rjesh Tandon,J.)

(S.H. Kapadia,C.J.)

Gurpreet
P.A.